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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,368	03/30/2005	J. Richard Hollrock	1620-0032WOUS	9384
35301	7590	06/02/2006	EXAMINER	
MCCORMICK, PAULDING & HUBER LLP CITY PLACE II 185 ASYLUM STREET HARTFORD, CT 06103			ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/501,368	HOLLROCK, J. RICHARD
	Examiner Mitra Aryanpour	Art Unit 3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 March 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4, 16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 18-22 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 March 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-4, drawn to a batting systems, classified in class 473, subclass 451.
  - II. Claim 16, drawn to a method of making a baseball, classified in class 29, subclass 899.
  - III. Claims 18-22, drawn to a baseball, classified in class 473, subclass 600.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process such as by using a blank cover and hand stitching the cover over a core.
3. Inventions I, II and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the batting system can be used with a variety of different balls i.e., whiffle balls. The subcombination has separate utility such as manually pitching a baseball to a batter to a catcher.

4. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.
5. Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.
6. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
7. During a telephone conversation with John Hilton on 25 May 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16, 18-22 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by High (4,074,905).

Regarding claim 1, High discloses a batting system comprising: a batting station having an enclosed space open at a front side (rectangular playing area 20), and including a ball collection receiver located at the rear of the space behind the batter (see column 5, lines 62-68 and column 6, lines 1-2, and lines 31-64), and having a hopper (hopper 52) for storing balls, a pitching machine (pitching machine 22; see column 7, lines 63-68 and column 7, lines 11-11) spaced from the batting station for pitching balls toward a strike zone (the area between plate 21 and screen 23) in the space; and a ball transport including a conveyor (conveyor 74; see figures 2 and 3; also column 8, lines 63-68 and column 9, lines 1-12) to move the balls from the hopper to the pitching machine, the transport including an escapement between the hopper and the pitching machine to provide individual balls to the pitching machine. It is noted the preamble, for use in conjunction with an open filed such as golf driving range, does not limit the structure of the claimed device because the portion of the claim following the preamble is a self-contained description of the structure and does not depend on the preamble for completeness.

Regarding claim 2, High shows the pitching machine includes a controller coin box 36; see column 9, lines 49-63) for adjusting the ball's trajectory pitched toward the strike zone, the controller located adjacent the batting station (see column 4, lines 1-5; see figure 1).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over High (4,074,905) in view of Battersby et al (6,612,942).

Regarding claim 3, High further shows balls (51), which as can be seen from figure 8, are compressible. High does not disclose expressly the material used to form the balls.

Battersby et al shows a ball (10) for pitching machines, wherein the ball is made to look like conventional baseballs in external configuration (see figure 1), but being molded from polymeric material (urethane foam; see column 2, lines 65-67) to have a foam core and a somewhat stiffer skin (the ball is to resemble a traditional baseball; see column 3, lines 1-8).

Regarding claim 4, high as modified above further shows the balls (10) are of a color selected from the group red (see column 3, lines 47-58).

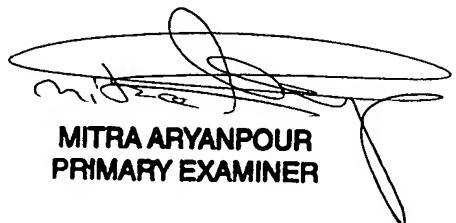
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 10:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

25 May 2006



MITRA ARYANPOUR  
PRIMARY EXAMINER